

When Recorded Return To:

Phoenix-Mesa Gateway Airport Authority
5835 S. Sossaman Road
Mesa, Arizona 85212-6014

The Phoenix Mesa Gateway Airport Authority and City of Mesa
INTERGOVERNMENTAL AGREEMENT
For
DEDICATED LAW ENFORCEMENT SERVICES

This Intergovernmental Agreement (the “Agreement”) is entered into this FIRST (1st) day of July, 2014 (the “Effective Date”) between the PHOENIX MESA GATEWAY AIRPORT AUTHORITY, an Arizona joint powers airport authority (“PMGAA”), and the CITY OF MESA, an Arizona municipal corporation (the “City”). PMGAA and the City may be referred to individually as a “Party” and jointly as the “Parties.”

WITNESSETH:

WHEREAS, PMGAA is the owner and operator of the Phoenix-Mesa Gateway Airport, an airport generally located at the intersection of Ray Road and Sossaman Road, City of Mesa, Maricopa County, Arizona (the “Airport”); and

WHEREAS, Arizona Revised Statutes, Sections 11-951 et seq. authorizes PMGAA and the City to enter into intergovernmental agreements for the provision of services, or for joint or cooperative actions; and

WHEREAS, the PMGAA must comply with security regulations established by the Transportation Security Administration (TSA) that require, among other things, the use of law enforcement officers; and

WHEREAS, PMGAA desires to contract with the City to provide the required and dedicated Law Enforcement Officer (LEO) services required by the TSA; and

WHEREAS, the City of Mesa desires to maintain a point of presence at the Airport in order for it to provide police services to the community at and around the Airport, including services above and beyond that is required by TSA regulations; and

WHEREAS, The Parties recognize that PMGAA and its tenants contribute to the general tax base of the City and are entitled to normal police services that are customarily provided to all citizens and businesses within the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. TERM AND CANCELLATION PROVISIONS

1.1. Term. The term of this Agreement shall be FIVE (5) years, commencing on the Effective Date and concluding at the end of the sixtieth (60th) month thereafter on June 30, 2019, unless sooner terminated pursuant to the provisions hereof.

1.2. Termination Provisions.

1.2.1. Either Party may cancel this Agreement without cause by providing at least ONE HUNDRED EIGHTY (180) days advance written notice to the non-terminating Party.

1.2.2. In the event of a material breach of any of the provisions of this Agreement, the non-breaching Party may cancel this Agreement by delivering written notice to the Party in breach specifically stating the nature of said breach. Upon receipt of such notice, the Party in breach shall have a period of SIXTY (60) consecutive calendar days in which to cure said breach. If said breach has not been cured within this SIXTY (60) consecutive day period, this Agreement shall automatically terminate on such date with further action.

1.2.3. In the event that scheduled air carrier operations cease, PMGAA may terminate this Agreement with THIRTY (30) days' written notice. In the event that scheduled air carrier operations are materially reduced or increased such that the level of police protection is no longer appropriate, or Transportation Security Regulations are amended such that the level of police protection is no longer appropriate, the terms of this Agreement may be renegotiated with THIRTY (30) days' written notice of either Party.

1.2.4. This agreement is subject to the review and consent of the Federal Aviation Administration (FAA). Should any part of this Agreement be found to be in conflict with or contrary to any FAA or Transportation Security Administration (TSA) rule, regulation, policy, or grant assurance, the Parties agree to immediately modify, amend, or cancel the Agreement to resolve such conflict.

2. DEFINITIONS

The following terms shall have, for purposes of this Agreement, the following meanings:

Agreement - means this Intergovernmental Agreement, including all exhibits attached hereto and incorporated herein by this reference.

Airport means that property and land area owned and operated by PMGAA. The term shall be considered interchangeable with the terms, "Airport Property", "on the Airport" or "at the Airport."

Airport Security Program (ASP) means that document prepared by PMGAA outlining the security procedures, methods, and response plans required under Transportation Security Regulation 1542. This document contains Sensitive Security Information and is restricted in its distributions, disclosure, and availability.

Dedicated Law Enforcement Officer (Dedicated LEO) - means that law enforcement personnel required to be present under TSA regulations and not available for other activities outside the boundaries of the Airport.

Department of Homeland Security (DHS) means that specific agency of the Federal Government responsible for US border security, or its authorized successor(s); includes and may, for purposes of this Agreement, alternatively be referred to as the Transportation Security Administration or TSA.

Federal Aviation Administration (FAA) means the component agency of the US Department of Transportation responsible for aviation affairs, or its authority successor(s).

Passenger Terminal means that building(s) located at 6033 S. Sossaman Road, including any adjacent facilities and areas used for passenger processing, parking lots and airside areas contained within the designated security identification display area (SIDA).

PMGAA Executive Director - means that certain person appointed by the PMGAA Board of Directors to serve as the chief executive for operation of the Airport, or his/her designee.

3. RESPONSIBILITIES

3.1. PMGAA. In support of this agreement PMGAA shall:

- 3.1.1. Provide an office within the Passenger Terminal for use by the Dedicated Law Enforcement Officers in support of the Airport Security Program (Exhibit A). PMGAA shall pay for office utilities and maintenance.
- 3.1.2. Communicate law enforcement-related information and security directives issued by the TSA.
- 3.1.3. Provide not less than ONE (1) operable PMGAA radio for use by City to communicate with Airport personnel.
- 3.1.4. Provide initial and recurrent Airport familiarization training for Dedicated LEO's, and for other persons when requested by the City, and up to \$7,000 per year in reimbursement of training and travel expended by the City for airport specific security training.
- 3.1.5. Pay the City of Mesa, quarterly, for one (1) Dedicated LEO, 24 hours per day, seven days per week, including a vehicle allotment and fuel for such vehicle. The amounts set forth in Exhibit B are the maximum amounts to be paid pursuant to this Agreement, unless otherwise amended in writing by the parties hereto.
- 3.1.6. In the event that commercial airline passenger service operations or TSA regulations change to affect the number of dedicated law enforcement officers required, the Parties agree to amend this Agreement to reflect such changed requirements.
- 3.1.7. Provide appropriate levels of access for all Dedicated LEOs performing duties in accordance with 3.2.1. PMGAA shall provide the City with the Airport Security Program and TSR 1542 information as amended within 15 calendar days after a new version was adopted.

3.2. City. In support of this Agreement, the City shall:

- 3.2.1. Provide the Airport with one (1) Dedicated LEO 24 hours per day, seven days per week, specifically assigned to meet the requirements of the Airport Security Program (ASP), Transportation Security Regulation (TSR) 1542, and other directives issued by the US Department of Homeland Security, Transportation Security Administration. The number of Dedicated LEO's to be provided may be re-evaluated as necessary to maintain compliance with the ASP.

- 3.2.1.1. City shall have sole control of staffing model used to meet the minimum requirements set forth in 3.2.1.
- 3.2.1.2. City is not required to maintain a dedicated, on-site police unit so long as the City maintains the minimum requirements in 3.2.1.
- 3.2.2. Provide the Airport with other non-dedicated law enforcement support for general policing purposes at a level determined by the City, as is customarily provided to Mesa citizens and businesses;
- 3.2.3. Conduct an annual audit to ensure compliance with the Airport Security Program and TSR 1542. The City shall notify the PMGAA by August 31st of each calendar year, in writing, confirming said audit has taken place and documenting any discrepancies noted and corresponding corrective actions(s) taken. The annual audit report will summarize compliance audit results for the prior fiscal year (July 1 to June 30).
- 3.2.4. Maintain accurate and complete records of all training given to Dedicated LEOs, as required by Federal Aviation Regulation (FAR) Part 139 and TSR 1542.
- 3.2.5. Provide its records pertaining to all accidents, incidents, inspections, and violations related to its LEO presence on the Airport to the FAA and PMGAA upon request as permitted by law.
- 3.2.6. Pay for consumables, custodial services, supplies, communications systems and networks associated with the office space provided by PMGAA and maintain facilities provided by the Airport in a neat, clean and working order.

4. INSURANCE AND INDEMNIFICATION

- 4.1. Insurance. The City shall, at its sole cost and expense, purchase and maintain the following types and limits of insurance, in the form specified below:

- 4.1.1. Coverage Requirements:

- 4.1.1.1. Comprehensive Automobile Liability insurance in an amount not less than \$5,000,000 combined single limit, covering all owned, non-owned and hired vehicles operated on the Airport that are assigned to or used in the performance of its activities or are operated within the air operations area (AOA) of the Airport.
 - 4.1.1.2. Workers' Compensation insurance as required by-law, and Employer's Liability insurance in an amount not less than \$1,000,000 covering work-related injuries to City employees assigned to or working at or on the Airport.
 - 4.1.1.3. General Commercial Liability insurance in an amount not less than \$5,000,000 per occurrence, to cover any claim arising from negligence or misconduct of its employees in providing the services and related activities described herein.
- 4.1.2. Form. Each insurance policy obtained pursuant to this Section 4.1, except for Workers' Compensation and Employer's Liability policies, shall: (i) name PMGAA as an additional named insured; (ii) contain a provision that written notice of cancellation or modification thereof shall be given to PMGAA not less than THIRTY (30) days before such cancellation or modification takes effect (TEN (10) days in case of nonpayment of premium); and (iii) contain a waiver of subrogation in favor of PMGAA. City shall not permit any insurance policy to be

cancelled or modified without PMGAA's written consent unless equivalent replacement policies are issued with no lapse in coverage. All policies shall be obtained from insurance companies licensed to do business in the State of Arizona and possessing a rating of at least A – VII or higher from the A.M. Best Company, or an equivalent rating and approved by PMGAA.

4.1.3. Certificates in Insurance. City shall deliver a certificate of insurance for each policy to PMGAA, in standard Acord format, prior to the Effective Date and continue to provide such certificate throughout the term of this Agreement

4.1.4. Blanket and Self-Insurance. City's insurance obligations under this Agreement may be satisfied by means of "blanket" or excess policies, or through self-insurance. If any or all limits of coverage, as specified in Section 4.1.1 herein, are provided via self-insurance, the City shall provide PMGAA a written acknowledgement of such self-insurance, and its responsibility to hold PMGAA harmless from acts and/or omissions of City's personnel up to and including the limits of such declared self-insurance coverage.

4.2. Indemnification.

4.2.1. To the fullest extent permitted by law, the City hereby agrees to defend, indemnify and hold harmless PMGAA and its members, elected or appointed officials, agents, contractors, subcontractors, boards, commissions and employees (hereinafter referred to collectively as "PMGAA" for purposes of this Section 4.2) for, from and against any and all claims, causes of action, liability, suits, litigation (including reasonable attorney's fees and other costs of investigation and litigation), actions, losses, damages or claims of any nature whatsoever which arise out of or in connection with (i) any negligent act or omission of the City or its agents, employees, contractors, or subcontractors (hereinafter referred to collectively as the "City" for purposes of this Section 4.2) in connection with the City's operations hereunder and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property, or (ii) the failure of the City to comply with any provisions of this Agreement. This indemnification shall exclude responsibility for any consequential damages of PMGAA and for claims arising by reason of the negligent or wrongful act of PMGAA or its employees, contractors or agents.

4.2.2. PMGAA shall defend, indemnify, and hold harmless the City, its officers, agents, employees, elected officials, and volunteers, for, from, and against any and all claims, causes of action, liability, suits, litigation (including reasonable attorney's fees and other costs of investigation and litigation), actions, losses, damages or claims of any nature whatsoever which arise out of or in connection with (i) any negligent act or omission or wilful misconduct of PMGAA while performing this Agreement, or (ii) the failure of PMGAA to comply with any provisions in this Agreement. PMGAA shall continue in effect during the term of this Agreement, an Airport Liability insurance policy in an amount approved by the PMGAA Board of Directors, including premises liability, bodily injury, and property damage, and shall name the City of Mesa as Named Insured under this policy.

5. MISCELLANEOUS

5.1. Funding. Each Party shall have the separate and independent responsibility for budgeting for and funding its own participation in this Agreement.

- 5.2. Cancellation of Agreement. As provided in Arizona Revised Statute Section 38-511, PMGAA or the City may cancel any contract to which it is a party within THREE (3) years after the execution thereof without penalty or further obligation, if any person significantly involved in initiating, negotiating, drafting or creating the contract on behalf of the Party so canceling is, at any time while the contract or any extension thereof is in effect, an employee or agent of the other Party to the contract in any capacity or a consultant to the other Party to the contract with respect to the subject matter of the contract.
- 5.3. Personal Liability. No member of or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Lease because of any breach thereof or because of its execution or attempted execution.
- 5.4. No Waiver. No provision of this Agreement may be waived or modified except by writing signed by the Party against whom such waiver or modification is sought.
- 5.5. Non-Waiver of Rights. No waiver or default by PMGAA of any of the terms, conditions, covenants or agreements hereof to be performed, kept or observed by the City shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained to be performed, kept or observed by the City, and PMGAA shall not be restricted from later enforcing any of the terms and conditions of this Agreement.
- 5.6. Amendment. Only a written instrument executed by the Parties may amend this Agreement, pursuant to A.R.S. 11-952.
- 5.7. Invalid Provisions. Should any provision of this Agreement or any application thereof be held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, unless one or both Parties would be substantially and materially prejudiced.
- 5.8. Litigation Expenses. In the event of litigation between the Parties, the prevailing Party shall be entitled to recover its attorneys' fees and all cost and expenses of litigation, including witness fees, expert witness fees, and court costs.
- 5.9. Governing Law and Attorney's Fees. The laws of the State of Arizona shall govern the matters set forth in this Agreement. Venue of any action brought under this Agreement shall lie in Maricopa County, Arizona. In the event of any litigation or arbitration between the Parties arising under this Agreement, the successful Party shall be entitled to recover its attorney's fees, expert witness fees and other costs incurred in connection with such litigation or arbitration.
- 5.9.1. E-verify Requirements. To the extent applicable under Arizona Revised Statute Section. 41-4401, the Parties warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statute 23-214(A). Either Party's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either Party. The Parties retain the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure that the Party is complying with the above-mentioned warranty.
- 5.10. Heading. The headings contained herein are for convenience in reference only and are not intended to define or limit the scope of this Agreement or any term thereof.
- 5.11. Filing. An executed copy of this Agreement shall be filed with the Maricopa County Recorder.

5.12. Entire Agreement. This Agreement, including any exhibits attached hereto at the time of its execution, constitutes the entire agreement between the Parties hereto and supersedes all prior negotiations, understandings and agreement between the Parties concerning such matters.

6. INCORPORATION OF RECITALS

The recitals set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

EXECUTED to be effective on the date specified above.

**PHOENIX MESA GATEWAY AIRPORT
AUTHORITY**, an Arizona joint powers airport authority.

By: _____
Jane Morris, Executive Director

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____ day of _____, 2013
by Jane L. Morris, in her capacity as the Executive Director of the Phoenix Mesa Gateway Airport Authority.

Notary Public

My Commission Expires

CITY OF MESA, an Arizona Municipal Corporation

By: _____
Christopher J. Brady, City Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____ day of _____, 2013
by _____, in his capacity as the _____ of the City of Mesa.

Notary Public

My Commission Expires

In accordance with A.R.S. 11-952, this Agreement has been reviewed by the undersigned attorneys who have determined that it is proper form and within the power and authority granted under the laws of the State of Arizona to the respective public entities they represent.

Mesa City Attorney

Attorney for Phoenix-Mesa Gateway Airport Authority

Date

Date

Exhibit B
Cost Breakdown

	<u>FY15</u> ²
One ¹ Dedicated Law Enforcement Officer (24x7)	410,324.52 ^{2a}
Reimbursement of training and travel for LEOs	7,000.00
<u>Annual Vehicle Allotment</u>	<u>8,985.02</u> ^{2b}
Total Not to Exceed Cost to PMGAA	\$426,309.54

Notes:

1. One dedicated law enforcement officer represents approximately 4.2 full time equivalent officers. Hours may vary to meet airline flight schedule requirements.
2. For fiscal years 2016-2019, the following shall apply:
 - a. Dedicated Law Enforcement Officer costs may be increase by an amount equal to that authorized by the City for annual salary increases for all officers, but in no case may exceed 5% per year.
 - b. The annual vehicle allotment may increase up to 5% per year to reflect increases in fuel and maintenance costs.